

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ERVIN MIDDLETON,

Plaintiff,

vs.

CITIBANK, N.A., INC.,

Defendant.

Case No. 2:16-cv-00622-RFB-NJK

REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiff's failure to file an Amended Complaint. *See* Docket No. 2. Plaintiff is proceeding in this action *pro se*, and submitted a Complaint along with an application to proceed *in forma pauperis* on March 21, 2016. Docket No. 1. On April 22, 2016, the Court granted Plaintiff's motion to proceed *in forma pauperis* and screened Plaintiff's Complaint pursuant to 28 U.S.C. § 1915(a). Docket No. 2. The Court found that Plaintiff failed to establish federal jurisdiction. *Id.* at 2. Accordingly, the Court dismissed Plaintiff's Complaint with leave to amend. *Id.* at 3. The Court gave Plaintiff until May 20, 2016, to file his Amended Complaint and warned Plaintiff that failure to comply with the Court's order "**will result in the recommended dismissal of this case.**" *Id.* (emphasis in original).

On April 29, 2016, Plaintiff filed a motion seeking reconsideration of the Court's ruling. Docket No. 4. On May 3, 2016, the Court denied Plaintiff's motion, as Plaintiff appeared to misinterpret the Court's screening order. Docket No. 5. The Court informed Plaintiff that the filing of an Amended Complaint, rather than a motion for reconsideration, was the proper procedural vehicle for Plaintiff to remedy his defective Complaint. *Id.* at 2. That order made clear that: "Plaintiff may file an Amended

1 Complaint, no later than May 20, 2016, if he believes he can correct the deficiencies the Court noted in its
2 prior order.” *Id.* To date, Plaintiff has failed to file an Amended Complaint. *See* Docket.

3 As Plaintiff has failed to file an Amended Complaint, no operative complaint exists in this case.
4 Further, the Court warned Plaintiff that failure to file an Amended Complaint by May 20, 2016, would
5 result in the recommended dismissal of this case. Docket No. 2 at 3.

6 Accordingly, **IT IS RECOMMENDED** that this case be **DISMISSED** without prejudice.

7 Dated: June 3, 2016

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Nancy J. Koppe
UNITED STATES MAGISTRATE JUDGE

10 **NOTICE**

11 Pursuant to Local Rule IB 3-2 **any objection to this Report and Recommendation must be in**
12 **writing and filed with the Clerk of the Court within 14 days of service of this document.** The Supreme
13 Court has held that the courts of appeal may determine that an appeal has been waived due to the failure
14 to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also
15 held that (1) failure to file objections within the specified time and (2) failure to properly address and brief
16 the objectionable issues waives the right to appeal the District Court’s order and/or appeal factual issues
17 from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi*
18 *Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).